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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>FRANCIS PAUL CHICK<br><br>Defendant. | No. 16-CR-00179 CRB<br><br>UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR REFERRAL TO THE CONVICTION ALTERNATIVES PROGRAM |

The United States submits this response in opposition to the defendant's January 18, 2017, motion for referral to the Conviction Alternatives Program ("CAP"), and for Pre-Trial Services' evaluation of the defendant to occur while the defendant is still in federal custody. *See* D.E. 43. The defendant's motion fails to account for the unique nature of CAP, providing an *alternative* to conviction or a custodial sentence for those defendants who demonstrate a commitment to rehabilitation. While the government does not discount the defendant's assertions that he is in fact a drug addict or that he would benefit from substance abuse treatment, the defendant's performance post-indictment demonstrates that he is not committed to treatment or rehabilitation. Moreover, CAP cannot provide the contemplated alternative to a custodial sentence because the defendant is facing an eleven-count indictment including one count of Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A, that carries a mandatory penalty of two years' imprisonment consecutive to any other sentence imposed. The defendant is not an appropriate candidate for CAP and an in-custody evaluation for CAP eligibility is not warranted.

Since his indictment in this case, the defendant has twice been offered the opportunity to participate in two different reputable residential drug treatment programs. On May 9, 2016, the defendant appeared before United States Magistrate Judge Elizabeth D. Laporte and the Court specifically ordered the defendant to be evaluated for the residential drug treatment program at Newbridge and, if accepted, to begin the program. The defendant was accepted to Newbridge a few days later but he refused to enroll in the treatment program at Newbridge. Instead, the defendant scheduled a May 16, 2016, evaluation with Baker Places' Acceptance Place, interestingly a less restrictive program that allows its participants to leave unaccompanied even in the early days of treatment. The defendant's Pre-Trial Services officer filed a related Form 8, and the Court held a bail violation hearing on May 17, 2016. At this hearing, the Court admonished the defendant and ordered that he be evaluated for drug treatment at Acceptance Place, instead of Newbridge and at the defendant's request, and that he enroll in that that program if accepted. On May 23, 2016, the defendant enrolled in treatment at Acceptance Place. The defendant was only two weeks into his program at Acceptance Place when he left unaccompanied, went home, and used methamphetamine and MDMA. Even so, Acceptance Place allowed the defendant to remain in the program and gave him another chance. Just two more weeks later, on June 20, 2016, the defendant again left Acceptance Place unaccompanied, bought and used drugs, and returned to Acceptance Place high, again. It appears that, this time, the defendant was either turned away by Acceptance Place, or chose to leave. In any event, he failed to appear to his magistrate and district court appearances on June 21, 2016, and his whereabouts remained completely unknown until June 29, 2016, six days after United States Magistrate Judge Laurel Beeler issued a bench warrant for the defendant's arrest. It is unclear whether the defendant may have communicated with the Pre-Trial Services officer daily after June 29, 2016, as he suggests, but it is certain that from on or before June 20, 2016, through June 29, 2016, he had no contact with his counsel nor did he contact his Pre-Trial Services officer.

This performance on pre-trial release is far more compelling than the defendant's convenient promises that he is ready for drug treatment now, after having experienced the alternative, custody. The

Court should look to the defendant's actions, not just his words. After this Court twice offered the defendant the opportunity to attend residential drug treatment programs, the defendant rebuked one opportunity, and completely failed to comply with the requirements of the other. These actions clearly show that the defendant is not committed to enrolling in a rigorous rehabilitative program, such as CAP. CAP is a Court-supervised program with limited spots – spots that should be reserved to those ready, willing, and wholly dedicated to seizing each and every opportunity for rehabilitation to ultimately change the course of their lives. Simply put, this defendant has demonstrated no such commitment.

In addition, the defendant is not an appropriate candidate for CAP because he is facing a mandatory sentence of at least two years' imprisonment. It is the understanding of the undersigned that CAP contemplates providing an intensive rehabilitation program in lieu of a conviction or, at the least, in lieu of a term of imprisonment. This intent is immediately frustrated by the fact that the defendant is facing a two-year mandatory term of imprisonment. Therefore, in light of nature of the charges pending against the defendant, he is not an appropriate CAP participant.

Importantly, out-of-custody drug treatment programs are not the only options available to the defendant. The Bureau of Prisons Residential Drug Abuse Program is an intensive nine-month treatment program available to those in custody and involves a separate housing unit, programming, work, school, and/or vocational activities. Based on the defendant's erratic performance on release, the government submits that the more controlled in-custody RDAP program is a better vehicle to address the defendant's needs for substance abuse treatment.

For these reasons, the defendant's Motion for Referral to the Conviction Alternative Program should be denied, and the Court should decline the defendant's request for an in-custody CAP evaluation.

DATED: February 1, 2017

Respectfully Submitted,

BRIAN J. STRETCH
United States Attorney

/s/______________________________
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